be like the right to the use of public highways; but this analogy involves the recognition of a right, not often considered, to have other people come to you upon a highway if they will. *Benjamin* v. *Storn*, L. R. P. C. 407. If it fall within this class of public rights, the private action in the principal case well lies; for the damage suffered is different in kind, and not simply in degree, from that suffered by the community in general. *Dantzer* v. *I. U. Ry. Co.*, 39 N. E. Rep. 223 (Ind.).

If a final basis is sought for the right recognized in the principal case, the interesting speculation arises whether there may not be a broad right to enter into such beneficial relations and to receive such temporal benefits as would accrue in an undisturbed course of events. The infringement of such a right must, upon authority, be considered to consist in an act tortious *per se*, directed against a third party, *prima facie* a tort against him only, and preventing him from entering into beneficial relations with the plaintiff. *Tarleton* v. *M'Gauley*, 1 Peake, N. P. C. 270. A notable example of such a right to enter into beneficial relations would seem to be the right to trade urged so insistently to-day. This appears to have no other true basis. Moreover, the principal case involves not a private benefit, but a public benefit. The courts may well hold that an obstruction to the conferring of such a public benefit due from a governmental body to one of its members is actionable when they might deny such a right in a private benefit; for the right to such a public benefit may be considered as existing though it is not enforceable. But upon the whole, does not the principal case at all events appear to require, as fundamental in the law of torts, the recognition of so broad a right as that to receive a benefit?

INJUNCTION AND SPECIFIC PERFORMANCE. — Contracts of actors and theatrical companies have furnished abundant material for the development of the rules governing injunctions and specific performance; this is as true to-day as in the days of Kean. An important case recently arose in Chicago, in which not the actors but the theatre refused to perform; and the manager of the Black Crook Company sought an injunction against the manager of the Alhambra Theatre. *Welty* v. *Jacobs*, 49 N. E. Rep. 723 (Ill.). There was a bilateral contract between the two parties. The terms of the plaintiff's contract are immaterial except in so far as he agreed to furnish his company to act for seven stated nights, and also to furnish certain printing ten days in advance. The defendant agreed to furnish the theatre with equipments, attendants, house programmes, and innumerable other small matters. Before the day for the first performance, the plaintiff had furnished his printing as agreed; but the defendant had let the theatre to another company. The plaintiff thereupon asked for an injunction restraining the defendant, in effect, from hindering the plaintiff's company in making use of the theatre, from using, or allowing any other company to use, the theatre during the seven days, and from "refusing to furnish" the plaintiff with all the things contracted for. The bill, it must be confessed, was most ingeniously framed; and the lower court granted the injunction. The Supreme Court of Illinois, however, on reviewing the case, supports the appellate court in the view that the injunction was improper.

The decision of the Supreme Court is admirable in its discussion of the principles of equity; and its conclusion cannot be doubted. The case raises the question, among others, to what extent a court of equity will

enforce a part of a person's contract when it cannot specifically enforce the whole. It is a rule that unless the terms of an agreement are distinct and independent, equity will not enforce one term without enforcing all. *Kemble* v. *Kean*, 6 Sim. 333. The famous case of *Lumley* v. *Wagner*, 1 DeG., M. & G. 604, relied upon by the present plaintiff, is not really inconsistent with the rule stated; for the express negative term which was there enforced, the agreement of an opera singer not to sing during a certain period for any one but the plaintiff, was dealt with as independent of the positive agreement to sing for the plaintiff; and those who attempt to support that case must first take the step of holding the negative agreement independent. When the rule is applied to the principal case, it is clear that the affirmative part of the defendant's contract could not have been enforced, because of the impossibility of the court's supervising performance. The negative terms, therefore, — one of them, by the way, being negative only in form, and by a clever subterfuge, — could not consistently with the rule have been enforced unless independent. Independent they can hardly be, for they were not expressed in the contract, and exist merely by implication from the positive terms. Their very existence by implication seems unjustifiable; but if they are implied, they must depend absolutely upon the affirmative terms from which they are inferred. *Whitwood Chemical Co.* v. *Hardman*, [1891] 2 Ch. 416. Since they are dependent, the argument based upon *Lumley* v. *Wagner*, *supra*, had no application to them, and they could not properly have been enforced unless the case falls within the further rule that when the affirmative part of a contract is unbroken and in a fair way to be performed, equity will enforce the negative part on the assurance that the whole will then be performed. The case, however, is not within that rule; for although the affirmative part of the defendant's contract was as yet unbroken at the time of the filing of the bill, the court had no assurance that it would not be broken, and had no means of preventing the breach. The injunction, therefore, was rightly refused. Great hardship might otherwise have been inflicted upon the defendant; for after the negative injunction had tied his hands and prevented him from making a profit from any other party, the plaintiff might have held him for full damages in an action at law for breach of the affirmative part of the contract, and the injunction would serve no purpose in mitigation of damages. Such injustice equity will not countenance.

Locus Pœnitentiæ of a Trustee. — Whether a trustee who, in collusion with a third person, has wrongfully conveyed the trust-res, may repent and bring a bill for the recovery of the property, is a problem which on theory may well admit of different solutions. The question often arises in respect to the Statute of Limitations, where the grantee, to whom the trustee has wrongfully conveyed, holds for the statutory period; is the trustee barred by the statute, as well as the *cestui que trusts* who were under disabilities at the time the conveyance was made? An answer in the affirmative was given in a recent Kentucky case on the principle that as the trustee might at any time during the statutory period have recovered the property in equity, he is barred, and what bars the trustee bars the *cestui*. *Willson* v. *Louisville Trust Co.*, 44 S. W. Rep. 121 (Ky.).